In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 486

WILLIAM A. SHERMAN, M. F. COCHRANE, AND J. B. Sanford, Constituting the Board of State Harbor Commissioners of the State of California, Operating the State Belt Railroad, appellants (below),

v.

THE UNITED STATES OF AMERICA, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD AND CAUSE

Now come William A. Sherman, M. F. Cochrane, and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, Appellants, and The United States of America, Appellee, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, now pending in this Court on questions certified by the said Circuit Court of Appeals, and move that this Honorable Court issue its writ of certiorari commanding that

Court to certify and send to this Court the entire record in this cause, in order that this Court may consider and decide the whole matter in controversy as upon appeal, pursuant to Section 239 of the Judicial Code, as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 (U. S. Code, Tit. 28, Sec. 346) and Rule 37 of the Rules of the Supreme Court of the United States.

A certified transcript of the record in this case and nine printed copies thereof have been lodged with the Clerk of this Court as exhibits to this motion.

It is believed that a final determination of the whole matter in controversy can be made by this Court when it has the entire record before it, and such a determination in this Court is highly desirable.

This is a suit commenced in the United States District Court for the Northern District of California (S. D.) by the United States against William A. Sherman, M. F. Cochrane, and J. B. Sanford, who constituted the Board of State Harbor Commissioners of the State of California and operated the State Belt Railroad, to recover statutory penalties for nine separate violations of the Federal Safety Appliance Act and Acts amendatory thereof (27 Stat. 531, 29 Stat. 85, 32 Stat. 943, 36 Stat. 298). This railroad, which extends a distance of about five miles along the water front of San Francisco Bay, is owned and operated by the State

of California. On an agreed statement of facts, which is in the record (p. 24–40), judgment was entered on February 25, 1929, in favor of the United States for the full amount for which suit was brought. An appeal was duly taken by the defendants to the United States Circuit Court of Appeals for the Ninth Circuit, which court by certificate filed November 12, 1929, has certified to this Court the following questions:

> 1. Is the State Belt Railroad a common carrier engaged in interstate commerce within the meaning of the Federal Safety Appliance Act?
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> 2. If No. 1 is answered affirmatively, is the State Belt Railroad (owned and operated by the State of California) subject to the Safety Appliance Act, which by general language imposes duties upon "any common carrier engaged in interstate commerce" but does not expressly refer to a State or other sovereignty? (*Guarantee Company* v. *Title Guaranty Company,* 224 U. S. 152, 155, et seq.)
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> 3. If this question also is answered in the affirmative, and if the complaint and the judgment be construed as running against the members of the Board of State Harbor Commissioners, in their official capacity, and hence in a sense against the State, did the District Court have jurisdiction of the action?
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> 4. Upon the other hand, if the judgment be deemed to be against the defendants in

their private capacity can it be sustained in view of the considerations:

(a) That the Act imposes penalties only upon the "carrier"; and

(b) That the defendants did not own or personally manage or operate the Belt Line, and the alleged infractions of the law were due to no act or omission upon their part and the wrong-doing was not only without their participation, consent, and knowledge but was contrary to their orders and instructions?

Important constitutional questions touching the relation of the State and the Federal Governments are involved in this case, and it is believed that the entire record, although brief, will offer the Court assistance in its decision which is not available in the certificate alone. Counsel state that in their opinion they will be able to present the case more satisfactorily upon the record than upon the certificate. While it is true that the questions certified cover all the decisive issues in the case, it is believed in the interest of the two governments affected that any possibility of further litigation in this case should be avoided by a final determination in this Court of the whole controversy.

Wherefore, the parties hereto jointly pray that this Honorable Court issue its writ of certiorari commanding the United States Circuit Court of Appeals for the Ninth Circuit to certify and send to this Court the entire record in this cause,

in order that this Court may consider and decide the whole matter in controversy as upon appeal.

William A. Sherman, M. F. Cochrane, and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad.

LEON E. MORRIS,
By HIRAM W. JOHNSON,
Attorneys.

THE UNITED STATES OF AMERICA,
By THOMAS D. THACHER,
Solicitor General.

APRIL 24, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930